

Central Valley Flood Protection Board Meeting

INFORMATIONAL BRIEFING

Public Safety Informational

**BRIEFING SUMMARY**

**Background**

Regular update. Representatives for local maintaining agencies including RD 1000, American River Flood Control District, and the City of Sacramento briefed the Board on unauthorized encampments. The Board directed staff to work with Agency and legislative consultants to address the issue. The local representatives expressed need for authorities and not funding at that time. Asm. Jim Cooper witnessed the media coverage of the issue and offered to author legislation, AB 137, to address the matter.

**Current Status**

AB 137 was approved on consent by the Senate Natural Resources and Water Committee. Upon return to session, AB 137 will proceed to fiscal committee and then the Senate floor. Please find a copy of the committee analysis and the latest amendment.

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# SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair

2019 - 2020 Regular

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<b>Bill No:</b>	AB 137	<b>Hearing Date:</b>	July 9, 2019
<b>Author:</b>	Cooper		
<b>Version:</b>	June 28, 2019		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Dennis O'Connor		

**Subject:** Facilities of the State Plan of Flood Control

## BACKGROUND AND EXISTING LAW

Existing law:

- 1) Establishes the Central Valley Flood Protection Board (board) and authorizes the board to engage in various flood control activities along the Sacramento River, the San Joaquin River, their tributaries, and related areas.
- 2) Defines "Facilities of the State Plan of Flood Control" as the levees, weirs, channels, and other features of the federally and state-authorized flood control facilities located in the Sacramento River and San Joaquin River drainage basin for which the board or the Department of Water Resources (DWR) has given the assurances of nonfederal cooperation to the United States required for the project, and specific units or portions of works of the Sacramento River Flood Control Project. (PRC §5096.805(j))
- 3) Requires the board, in Article 7, Chapter 3, Part 4, Division 5, of the Water Code, to approve every plan of reclamation, flood control, drainage, improvement, dredging or work, that includes or contemplates the construction, enlargement, revetment or alteration of any levee, embankment, canal or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or connected therewith, or upon any land adjacent thereto, or within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, before construction is commenced. (WC §§ 8710 et seq.)
  - a) Specifically, and among other things, it is unlawful to cut or alter any levee along a river or by-pass at specific locations identified in Article 7, nor any levee forming part of any of the plans of flood control, without permission of the board.
  - b) Any person who does any act contrary to or in violation of any of these provisions is guilty of a misdemeanor.

## PROPOSED LAW

This bill would:

- 1) Expand the prohibition on cutting or altering specific levees to a prohibition on concealing, defacing, destroying, modifying, using, occupying, cutting, altering, or physically or visually obstructing any levee forming part of any of the plans of flood

control adopted by this part or by the board, or any other facility of the State Plan of Flood Control without permission of the board.

- 2) Authorize the board, its designee, or a local agency that maintains the levee or facility, to inspect and remove any physical or visual obstructions placed or alterations made on any levee along a river or bypass at any of the places mentioned in Article 7, any levee forming part of any of the plans of flood control adopted by this part or by the board, or any other facility of the State Plan of Flood Control.
- 3) Authorize a peace officer, as defined, to enforce the provisions of Article 7 in any place in the state to which the peace officer's authority extends.

### ARGUMENTS IN SUPPORT

According to the author, "There are 1,100 miles of levees in the Sacramento-San Joaquin Delta. California relies on the extensive systems of levees, weirs and flood bypasses to protect the lives and property of thousands of residents. Some levees date as far back to 1850, when California first joined the union."

"As engineered structures designed to prevent flooding, levees require regular operation and maintenance against erosion and other threats including major earthquakes, rising sea levels due to climate change and water seepage through the earthen barriers."

"Recent media reports highlighted a new threat to the levee system, the increasing issue of unauthorized excavations on the levees which in some cases results in significant damage. The unauthorized excavations are a growing threat to the integrity and stability of the levee system that protect large areas of Sacramento from flooding."

"Local maintaining agencies (LMAs) are frequently encountering large swaths of levee being removed leaving deep trenches on the side of the levees. The unauthorized alteration of the levee slope and riprap threatens not only the integrity of the engineered levee structure but also results in costly unbudgeted repairs by the LMAs. Last year alone, one LMA repaired 30 unauthorized cuts to the levee system."

"AB 137 strengthens protections against unauthorized excavations, cuts, alterations, or destruction of the levee system in order to protect against premature levee failure which could resulting in flooding, displacement of residents and thousands of dollars of damage to homes and property."

**ARGUMENTS IN OPPOSITION:** None received

### COMMENTS

*Problem Just Recently Recognized.* In early May 2019, there were a number of news reports documenting situations where homeless encampments included significant excavation of levees. The picture on the next page shows one such excavation.

## Northgate & Garden Highway



(Source: Reclamation District 1000)

*Existing Authorities Insufficient To Address This Situation.* The authorities granted to the board were in anticipation of such things as unauthorized fences across levees, pipes running through levees, etc. For example, the need for law enforcement actions to clear an encampment as shown above was never anticipated when the flood statutes were most recently revised in 2007. (The flood package of bills included AB 5 (Wolk, Stat. 2007, Ch. 366), AB 70 (Jones, Stat. 2007, Ch. 367), AB 156 (Laird, Stat. 2007, Ch. 368), AB 162 (Wolk, Stat. 2007, Ch. 369), SB 5 (Machado, Stat. 2007, Ch. 364), SB 17 (Florez, Stat. 2007, Ch. 365))

Technical Amendment Needed. The bill expands the list of actions requiring the board's permission and authorizes the board and others to enforce those provisions on "any levee along a river or bypass at any of the places mentioned in [Article 7], any levee forming part of any of the plans of flood control adopted by this part or by the board, or any other facility of the State Plan of Flood Control." In order to ensure that the board and others have access to inspect the facilities and enforce the prohibitions, it probably makes sense to clarify that those facilities include any associated right of way is also. (See suggested amendments)

**SUGGESTED AMENDMENTS**

**AMENDMENT 1**

On page 3, line 34, delete "Control" and insert "Control, including but not limited to any and all associated right of way"

**AMENDMENT 2**

On page 4, line 3, delete "Control." and insert "Control, including but not limited to any and all associated right of way."

**SUPPORT**

California Central Valley Flood Control Association  
Reclamation District 1000  
Reclamation District 999

**OPPOSITION**

None Received

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AMENDED IN SENATE JULY 11, 2019

AMENDED IN SENATE JUNE 28, 2019

AMENDED IN SENATE JUNE 25, 2019

AMENDED IN ASSEMBLY MARCH 11, 2019

CALIFORNIA LEGISLATURE—2019—20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 137**

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**Introduced by Assembly Member Cooper**

December 7, 2018

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An act to amend Section 8720 of, to add Section 8540 to, and to repeal and add Section 8712 of, the Water Code, relating to flood control.

LEGISLATIVE COUNSEL'S DIGEST

AB 137, as amended, Cooper. Facilities of the State Plan of Flood Control.

Existing law establishes the Central Valley Flood Protection Board and authorizes the board to engage in various flood control activities along the Sacramento River, the San Joaquin River, their tributaries, and related areas. Existing law requires every plan of reclamation, flood control, drainage, improvement, dredging, or work, that includes or contemplates the construction, enlargement, revetment, or alteration of any levee, embankment, canal, or other excavation in the bed of or along or near the banks of the Sacramento or San Joaquin Rivers or any of their tributaries or connected therewith, upon any land adjacent thereto, within any of the overflow basins thereof, or upon any land susceptible to overflow therefrom, to be approved by the board before construction is commenced. Existing law prohibits a levee along a river

or bypass at any of those specified places, or any levee forming part of any adopted flood control plan, from being cut or altered without permission of the board. Existing law makes a violation of the latter provisions a misdemeanor.

This bill would instead prohibit a person from concealing, defacing, destroying, modifying, using, occupying, cutting, altering, or physically or visually obstructing any levee along a river or bypass at any of those specified places, any levee forming part of any flood control plan, or any other facility of the State Plan of Flood Control, *including, but not limited to, any and all associated rights of way*, without permission of the board. By expanding the behavior that would be punishable as a misdemeanor, the bill would impose a state-mandated local program. The bill would authorize the board or its designee, or a local agency that maintains the levee or facility, to inspect and remove any physical or visual obstructions placed or alterations made on any of the above-specified levees or ~~facilities~~ *facilities, including, but not limited to, any and all associated rights of way*. The bill would authorize a peace officer, as defined, to enforce those provisions punishable by a misdemeanor in any place in the state to which the peace officer's authority extends.

This bill would declare, among other things, that facilities of the State Plan of Flood Control are critical public infrastructure necessary for the protection of life, property, and the economy.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 8540 is added to the Water Code, to read:
- 2 8540. The Legislature finds and declares as follows:
- 3 (a) The federal, state, and local governments have invested
- 4 billions of dollars into improving the State Plan of Flood Control,
- 5 which is composed of essential public safety infrastructure.
- 6 (b) The purpose of and need for the State Plan of Flood Control
- 7 is to protect life, property, and the economy.

1 (c) Facilities of the State Plan of Flood Control are critical public  
2 infrastructure necessary for the protection of life, property, and  
3 the economy.

4 SEC. 2. Section 8712 of the Water Code is repealed.

5 SEC. 3. Section 8712 is added to the Water Code, to read:

6 8712. (a) A person shall not conceal, deface, destroy, modify,  
7 use, occupy, cut, alter, or physically or visually obstruct any levee  
8 along a river or bypass at any of the places mentioned in this article,  
9 any levee forming part of any of the plans of flood control adopted  
10 by this part or by the board, or any other facility of the State Plan  
11 of Flood ~~Control~~ *Control, including, but not limited to, any and*  
12 *all associated rights of way*, without permission of the board.

13 (b) The board or its designee, or a local agency that maintains  
14 the levee or facility, may inspect and remove any physical or visual  
15 obstructions placed or alterations made on any levee along a river  
16 or bypass at any of the places mentioned in this article, any levee  
17 forming part of any of the plans of flood control adopted by this  
18 part or by the board, or any other facility of the State Plan of Flood  
19 ~~Control~~ *Control, including, but not limited to, any and all*  
20 *associated rights of way*.

21 SEC. 4. Section 8720 of the Water Code is amended to read:

22 8720. (a) Any person who does any act contrary to or in  
23 violation of any of the provisions of this article is guilty of a  
24 misdemeanor.

25 (b) A peace officer, as defined in Chapter 4.5 (commencing  
26 with Section 830) of Title 3 of Part 2 of the Penal Code, may  
27 enforce the provisions of this article in any place in the state to  
28 which the peace officer's authority extends.

29 SEC. 5. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the penalty  
34 for a crime or infraction, within the meaning of Section 17556 of  
35 the Government Code, or changes the definition of a crime within  
36 the meaning of Section 6 of Article XIII B of the California  
37 Constitution.